

REMARKS

Claims 1-21 were pending in the application. In the Office Action, the Examiner called for restriction under 35 U.S.C. §121.

Restriction Requirement

Restriction to one of the following inventions was required:

Group I: Claims 1-19, drawn to a semiconductor device, classified in class 257, subclass 758.

Group II: Claims 20 and 21, drawn to a method of forming a semiconductor device, classified in class 438, subclass 638.

Rejoinder of Groups I and II is respectfully requested. Regarding the request for rejoinder in general, it is noted that the MPEP lists two criteria for a proper restriction requirement. First, the inventions must be independent or distinct. MPEP § 803. Second, searching the additional inventions must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.*

In the present case, each of Groups I and II relates to semiconductor memory devices having a particularized interlayer insulating film structure, and any search for references pertaining to either one of Groups I or II will certainly encompass references pertaining to the other group in the set. That is, each of Groups I and II is directed toward semiconductor memory devices having a particularized interlayer insulating film structure, and therefore the groups are inextricably linked. Thus, it is respectfully submitted that the inventions of Groups I and II are not distinct and that it would not place an unnecessary burden on the Examiner to search and examine Groups I and II together.

In sum, enforcing the present restriction and election requirements would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of the shortened patent term that may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden on the Examiner has not been made. Indeed, the search and examination of Groups I and II would likely be co-extensive and, in any event, would involve such interrelated art that the search and examination of the two groups can be made together without undue burden on the Examiner.

In view of the above, reconsideration and withdrawal of the restriction requirement is respectfully requested. If the restriction requirement is nonetheless maintained, Applicants elect Group I, without traverse, for further prosecution in this application. Further, in response to the election of species requirement, Applicants elect Embodiment 6 of Figures 7 and 8. Claims 10, 18 and 19 are readable on Embodiment 6.

Applicants reserve the right to file divisional applications to non-elected subject matter.

Claim Amendments

Claims 10, 18 and 19 have been amended for purposes of clarification.

New Claims

New claims 22-30 have been added to cover further aspects of the invention.

If any issues remain, or if the Examiner has any further suggestions, he/she is invited to call the undersigned at the telephone number provided below.

The Examiner is hereby authorized to charge any insufficient fees or credit any overpayment associated with the above-identified application to Deposit Account No. 50-0320.

The Examiner's consideration of this matter is gratefully acknowledged.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'B. Polito', written over a horizontal line.

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